MONTANA LEGISLATIVE HISTORY

Chapter 357 1999

Bill H _____ S 476 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-23	✓ C	Hearing Date(s)	2-17	✓ C
	3-25	✓ C		2-19	✓ C
	3-30	___ C		_____	✓ C
	_____	___ C		_____	___ C
Date Out	_____	___ C			

Did this bill originate in an interim committee? ___ Yes ___ No

Committee _____ Report _____

LEGISLATIVE HISTORIES SINCE 1997

The scope and depth of legislative committee minutes varies by year and by committee. If you would like additional information about a hearing, you may want to determine whether the hearing was recorded. In addition, some recent floor debates were also recorded. For information on accessing or purchasing these recordings, contact the Historical Society Archives at 406-444-4774.

If you have concerns regarding the format of the enclosed committee minutes or the recordings of the hearings, it is suggested that you contact your state legislators.

4/12 Chapter Number Assigned
Chapter Number 290
Effective Date: 4/09/1999 - All Sections

SB 474 Introduced by Bishop *LC1669 Drafter: Kurtz*

Prioritize the Expenditure of Money Received by the Department of Fish, Wildlife, and Parks Through the Sale of Resident and Nonresident Upland Game Bird, Combination Sports, and Big Game Combination Licenses;...

2/13 Introduced and 1st Reading
2/13 Referred to Fish and Game
3/01 Missed Deadline for General Bill Transmittal

SB 475 Introduced by Bishop *LC1275 Drafter: Kurtz*

Revise the Penalties for Noncompliance with Motor Vehicle Insurance Requirements;...

2/13 Introduced and 1st Reading
2/16 Hearing
2/17 Tabled in Committee
3/01 Missed Deadline for General Bill Transmittal

SB 476 Introduced by Bishop *LC0839 Drafter: Lane*

Revise the Laws Relating to Construction Liens;...

2/13	Introduced and 1st Reading		
2/13	Referred to Judiciary		
2/17	Hearing		
2/17	Fiscal Note Requested		
2/19	Committee Executive Action--Bill Passed as Amended	8	0
2/20	Committee Report--Bill Passed as Amended		
2/22	Fiscal Note Received		
2/22	Fiscal Note Signed		
2/22	Fiscal Note Printed		
2/22	2nd Reading Passed	49	0
2/23	3rd Reading Passed	48	1
	Transmitted to House		
3/02	Referred to Judiciary		
3/23	Hearing		
3/25	Tabled in Committee		
3/30	Taken from Table in Committee		
3/30	Committee Executive Action--Bill Concurred as Amended	17	2
3/30	Committee Report--Bill Concurred as Amended		
4/01	2nd Reading Concurred as Amended	91	6
4/01	3rd Reading Concurred	94	5
	Returned to Senate with Amendments		
4/08	2nd Reading House Amendments Concurred	48	2
4/09	3rd Reading Passed as Amended by House	46	4
4/12	Sent to Enrolling		
4/13	Returned from Enrolling		
4/15	Signed by President		
4/16	Signed by Speaker		
4/16	Transmitted to Governor		

4/19	Signed by Governor		
4/20	Chapter Number Assigned		
	Chapter Number 357		
	Effective Date: 10/01/1999 - All Sections		

SB 477 Introduced by Mahlum, et al. *LC1615 Drafter: Lane*

Provide Immunity for Employers for Injuries or Damages Sustained by Employees in Ridesharing Arrangements

2/13	Introduced and 1st Reading		
2/13	Referred to Judiciary		
2/17	Hearing		
2/18	Committee Executive Action--Bill Passed as Amended	7	1
2/18	Committee Report--Bill Passed as Amended		
2/20	2nd Reading Passed as Amended	46	1
2/23	3rd Reading Passed	44	4
	Transmitted to House		
3/02	Referred to Judiciary		
3/23	Hearing		
3/26	Committee Executive Action--Bill Concurred	16	3
3/27	Committee Report--Bill Concurred		
3/30	2nd Reading Concurred	79	20
3/31	3rd Reading Concurred	85	14
	Returned to Senate		
3/31	Sent to Enrolling		
4/01	Returned from Enrolling		
4/10	Signed by President		
4/12	Signed by Speaker		
4/12	Transmitted to Governor		
4/20	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 385		
	Effective Date: 10/01/1999 - All Sections		

SB 478 Introduced by Christiaens, et al. *LC1449 Drafter: Niss*

Require the Board of Pharmacy to Adopt Rules Providing for the Registration of Ambulatory Surgical Facilities as Entities Allowed to Possess Dangerous Drugs Pursuant to Title 50, Chapter 32, Part 3, MCA;...

2/13	Introduced and 1st Reading		
2/13	Referred to Public Health, Welfare and Safety		
2/13	Fiscal Note Requested		
2/17	Fiscal Note Received		
2/18	Fiscal Note Signed		
2/18	Fiscal Note Printed		
2/19	Hearing		
2/20	Committee Executive Action--Bill Passed	11	0
2/20	Committee Report--Bill Passed		
2/23	2nd Reading Passed	49	0
2/24	3rd Reading Passed	49	0
	Transmitted to House		
3/02	Referred to Human Services		
3/15	Hearing		

Senate BILL NO. 476

INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO CONSTRUCTION LIENS; REVISING THE FORM FOR GIVING NOTICE OF THE RIGHT TO CLAIM A CONSTRUCTION LIEN; REQUIRING THE SECRETARY OF STATE TO ESTABLISH A PILOT PROGRAM FOR THE ELECTRONIC FILING AND PERFECTION OF CONSTRUCTION LIENS, INCLUDING NOTICES; ALLOWING ALTERNATIVE FILING OF CONSTRUCTION LIENS WITH THE SECRETARY OF STATE; AMENDING SECTIONS 2-15-401, 71-3-531, 71-3-532, AND 71-3-535, MCA; AND PROVIDING A TERMINATION DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-15-401, MCA, is amended to read:

"**2-15-401. Duties of secretary of state -- authority.** (1) In addition to the duties prescribed by the constitution, it is the duty of the secretary of state to:

(a) attend at every session of the legislature for the purpose of receiving bills and resolutions and to perform other duties as may be devolved upon the secretary of state by resolution of the two houses or either of them;

(b) keep a register of and attest the official acts of the governor, including all appointments made by the governor, with date of commission and names of appointees and predecessors;

(c) affix the great seal, with the secretary of state's attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required;

(d) record in proper books all articles of incorporation filed in the secretary of state's office;

(e) take and file receipts for all books distributed by the secretary of state and direct the county clerk of each county to do the same;

(f) certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor;

(g) furnish, on demand, to any person paying the fees, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;

(h) keep a fee book in which must be entered all fees, commissions, and compensation earned,

collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which must be verified annually by the secretary of state's affidavit entered in the fee book;

(i) file in the secretary of state's office descriptions of seals in use by the different state officers;

(j) discharge the duties of member of the board of examiners and of the board of land commissioners and all other duties required by law;

(k) register marks as provided in Title 30, chapter 13, part 3;

(l) report annually to the legislative services division all watercourse name changes received pursuant to 85-2-134 for publication in the Laws of Montana;

(m) keep a register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

(2) The secretary of state may develop and implement a statewide electronic filing system as described in 2-15-404 and [section 2]."

NEW SECTION. **Section 2. Electronic construction lien filings.** (1) As authorized by 2-15-401, the secretary of state shall develop and implement a statewide electronic system pilot program to accommodate the electronic filing of construction liens, including notices of the right to claim a lien.

(2) The secretary of state shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens and notices of the right to claim a lien to subsequent purchasers or encumbrancers from the date of the lien's perfection. [The rules must establish fees for electronic filing of construction liens under this section. The fees must be commensurate with the costs of processing the documents, based on fees for other electronic filings. The secretary of state shall maintain records sufficient to support the amounts of the fees established under this section and shall deposit all fees in the enterprise fund in the state treasury.]

Section 3. Section 71-3-531, MCA, is amended to read:

"**71-3-531. Notice of right to claim lien required -- exceptions.** (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at ~~his~~ the owner's request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any

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service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of ~~his~~ the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), this notice ~~must~~ may not be given ~~no~~ later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting party from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section ~~must~~ may not be given ~~no~~ later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to ~~him~~ the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless ~~he~~ the person has complied with this subsection.

(6) (a) ~~A~~ Except as provided in subsection (6)(b), a person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy ~~must~~ may not be filed ~~no~~ later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The notice of the right to claim a lien may be electronically filed with the secretary of state

as provided in [section 2].

~~(b)~~(c) The notice filed with the clerk and recorder or secretary of state for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder or secretary of state may remove the notice from the public record when it lapses.

~~(c)~~(d) The continuation statement must include:

(i) the clerk and recorder's file or secretary of state's number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

~~(d)~~(e) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder or secretary of state at the time ~~he~~ that the person files ~~his~~ the lien.

(7) At the request of any subcontractor or material supplier who may claim a lien through ~~him~~ a person providing services or materials to a contracting owner, ~~a~~ the person shall furnish to the requestor within 5 business days:

(a) a description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner."

Section 4. Section 71-3-532, MCA, is amended to read:

"**71-3-532. Content of notice of right to claim lien.** (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information ~~and be in substantially the following form~~:

(a) date of mailing;

(b) owner's name;

(c) owner's address;

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(d) name of person filing notice;

(e) address of person filing notice;

(f) a description sufficient to identify the property that is being improved; and

(g) the following notice:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

~~To: ..... Date of mailing: .....~~

~~(Owner)~~

~~.....~~

~~(Owner's address)~~

~~This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at .....~~

~~A lien may be claimed for all services and materials furnished to you if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given. However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given.~~

~~Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid.~~ THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

~~This notice has been sent to you by:~~

~~NAME:.....~~

~~ADDRESS:.....~~

~~TELEPHONE:.....~~

~~IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, PLEASE CALL US~~

~~IMPORTANT INFORMATION ON REVERSE SIDE~~

~~IMPORTANT INFORMATION FOR YOUR PROTECTION~~

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

-- RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

-- LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

-- WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.

-- OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.

-- CONSULT an attorney, a professional escrow company, or your mortgage lender."

Section 5. Section 71-3-535, MCA, is amended to read:

"**71-3-535. Attachment of lien -- filing.** (1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, ~~he~~ the person has filed a lien not later than 90 days after:

(a) ~~his~~ the person's final furnishing of services or materials; or

(b) the owner files a notice of completion pursuant to 71-3-533.

(2) (a) ~~The~~ Except as provided in subsection (2)(b), the lien must be filed with the county clerk

and recorder of the county in which the improved real estate is located.

(b) The notice of the right to claim a lien may be electronically filed with the secretary of state as provided in [section 2].

~~(b)~~(c) The person claiming the lien ~~must~~ shall certify to the county clerk and recorder or secretary of state that a copy of the lien has been served on the owner of record as provided in 71-3-534(2).

(3) The lien statement must contain:

(a) the name and address of the person claiming the lien;

(b) a description of the real property against which the lien is claimed sufficient to identify it;

(c) the name of the contracting owner;

(d) the name and address of the party with whom the person claiming the lien contracted to furnish services or materials;

(e) a description of the services or materials provided;

(f) the amount unpaid for services or materials or, if no amount is fixed by the contract, a good faith estimate of the amount unpaid, designated as an estimate;

(g) (i) the date on which the services or materials were first furnished; and

(ii) the date on which the services or materials were last furnished; and

(h) a declaration that a notice of a right to claim a lien was given to the contracting owner or an explanation of why ~~such~~ the notice was not required.

(4) A lien notice that is filed pursuant to this section before the person claiming the lien has substantially furnished services or materials pursuant to a real estate improvement contract is not effective to create a construction lien unless the lien claimant is prevented from fulfilling ~~his~~ the lien claimant's obligation because of the fault of another person.

(5) Except as provided in subsection (6), a lien attaches at the commencement of work as defined in 71-3-522.

(6) A lien attaches when it is filed if it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures that are not used incident to producing a change in the physical condition of the real estate."

NEW SECTION. **Section 6. Codification instruction.** [Section 2] is intended to be codified as an integral part of Title 2, chapter 15, part 4, and the provisions of Title 2, chapter 15, part 4, apply to

[section 2].

NEW SECTION. **Section 7. Coordination instruction.** The bracketed language in [section 2] is effective only if Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, is declared invalid.

NEW SECTION. **Section 8. Termination.** [Sections 1, 2, 3, and 5] terminate June 30, 2002.

- END -

FISCAL NOTE

Bill #: SB0476

Title: Revise requirements for filing contractor laws

Primary Sponsor: Al Bishop

Status: As introduced

Al Bishop 2/22/99
Sponsor signature Date

Dave Lewis 2-20-99
Dave Lewis, Budget Director Date

Fiscal Summary

	FY2000 Difference	FY2001 Difference
Expenditures:		
Other (Proprietary 06)	26,829	125,773
Revenue:		
Other	0	46,600
Net Impact on General Fund Balance:	**0**	**0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts

Fiscal Analysis

ASSUMPTIONS:

1. The Secretary of State (SoS) will receive direction on the needs of the pilot project from a committee of interested and affected individuals. Those needs will dictate the changes to the SoS current UCC lien system.
2. It is estimated that 1,500 contracted hours @ $60/hour are necessary to make changes to the SoS UCC lien system to include the contractors liens.
3. An additional grade 11 FTE will be necessary to process, verify and file the additional contractor liens and handle search requests.

SB 476

4. The SoS will recover the costs of the pilot project through the fees it charges for services including lien filings, searches and public access.
5. The revenue estimates include 20 new public access customers @ $25/month ($6,000); 50 additional liens a month @ $7/lien ($4,200); and 20 debtor searches per day @ $7/search ($36,400).

FISCAL IMPACT:

Secretary of State	FY2000 Difference	FY2001 Difference
FTE	0.75	1.00
Expenditures:		
Personal Services	19,854	26,473
Operating Expenses	6,975	99,300
TOTAL	26,829	125,773
Funding:		
Other (Proprietary 06)	26,829	125,773
Revenues:		
Other (Proprietary 06)		46,600
Net Impact to Fund Balance (Revenue minus Expenditure):		
Other	(26,829)	(79,173)

LONG-RANGE IMPACTS:

There will not be such discrepancies between revenue and expenses in future years.

TECHNICAL NOTES:

1. This pilot project terminates June 30, 2002.

SB 472 SPONSOR: Wells, Jack SHORT TITLE: Revise criminal code provisions relating to machine guns and silencers
REFERRED ON: 02/13/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 7 - 1
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

SB 473 SPONSOR: Doherty, Steve SHORT TITLE: Generally revise laws relating to estates, trusts, & fiduciary relationships
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/17/1999 Bill Passed -- VOTE: 8 - 0
FINAL DISPOSITION 04/12/1999 Chapter Number Assigned

SB 476 SPONSOR: Bishop, Al SHORT TITLE: Revise laws relating to construction liens
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

SB 477 SPONSOR: Mahlum, Dale SHORT TITLE: Limit employer liability for ride sharing arrangements
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 7 - 1
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 481 SPONSOR: Thomas, Fred SHORT TITLE: Extend custody powers to juvenile home arrest officers
REFERRED ON: 02/13/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed -- VOTE: 8 - 0
FINAL DISPOSITION 04/16/1999 Chapter Number Assigned

SB 486 SPONSOR; Halligan, Mike SHORT TITLE: Revise law relating to parenting between natural parent and third parties
REFERRED ON: 02/13/1999 HEARD ON: 02/17/1999
EXECUTIVE ACTION: 02/18/1999 Bill Passed as Amended -- VOTE: 8 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 503 SPONSOR: Ellingson, Jon SHORT TITLE: Revise procedure for imposing death penalty
REFERRED ON: 02/16/1999 HEARD ON: 02/18/1999
EXECUTIVE ACTION: 02/19/1999 Bill Passed as Amended -- VOTE: 6 - 1
FINAL DISPOSITION 03/29/1999 (H) 2nd Reading Concur Motion Failed; Vote: 43 - 55

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 17, 1999 at 8:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 450, 2/12/1999; SB 451, 2/12/1999; SB 456, 2/12/1999; SB 473, 2/12/1999; SB 476, 2/12/1999; SB 477, 2/12/1999; SB 486, 2/12/1999

Executive Action: SB 473; SB477; SB390; SB461; SB463; SB303

SEN. BARTLETT said in **SB 390** insurers will pay the attorney fees and this may not be an issue.

SEN. HOLDEN said he supports the motion to table. He said if they look at lines 7 and 8 this is a self serving bill for medical providers. It entails more than medical providers, it also includes attorneys and insurance carriers. Attorneys are an important piece of the puzzle as often times they help hold down the cost of medical bills.

CHAIRMAN GROSFIELD said on page 2, there is also the issue of 69 percent of hospital charges, but he also supports the motion to table.

Vote: Motion **carried 8-0.**

{Tape : 1; Side : B; Approx. Time Counter : 9:00 a.m.}

HEARING ON SB 476

Sponsor: **SEN. AL BISHOP, SD 9, BILLINGS**

Proponents:

Mike Foster, MT Contractors Assoc.
Ed Maronick, Maronick Construction
John Cadby, MT Bankers Assoc.
Carl Schweitzer, Sub-Contractors Assoc.
Gene Schadt, Helena Sand and Gravel

Opponents: None

Opening Statement by Sponsor:

SEN. AL BISHOP, SD 9, BILLINGS, said this bill regards construction liens. The construction industry and the bankers want to make language that is plain to a layman. The second stage is to have a pilot program with the Secretary of State to file electronically.

Proponents' Testimony:

Mike Foster, MT Contractors Assoc., said the current lien law is confusing and cumbersome to the average person and the construction industry. They want to do a pilot project for electronically filing liens and the notice of intention for filing a lien. This pilot project would be similar to the one that is being done for motor vehicle liens. They also want to

address the notice of intent to file a lien or notice of right to claim a lien. This language will simplify that and both the consumers and construction industry will benefit from the language that is in this bill. He said the Clerk and Recorders are concerned about the possible revenue loss. It was never their intention to cause any fiscal harm to a county. It is more simple when they deal with a pilot project to have a central storage place and the Secretary of State's office could handle this.

Ed Maronick, Maronick Construction, said there are two parts to this bill. The first is simplifying the notice of intent to file a lien. This intent is only required in residential property to the home owner, etc.. It notifies them that they may have to pay twice for the same services and it tells them how to protect themselves. This notice has to be sent 20 days before the beginning of the project and this time frame has not been workable and tough to meet. This bill is trying to simplify the legal jargon in current language that is confusing. Many people think the construction company has immediately filed a lien and this is not true. This bill will eliminate that and put it into layman's terms. They have also changed the format of the notice. The second part of the bill is the electronic filing of the liens. They currently do it with the Clerk and Recorder and it would be easier to do it electronically.

John Cadby, MT Bankers Assoc., said the current process is cumbersome and time consuming to file these notices with the county. The purpose is to make the public aware of what liens have been filed. The banks are already hooked into the Secretary of State's office, so it is easy for them to file UCC liens, but it is not very easy for the contractor to file his liens. They want to use the same pilot that is being used for motor vehicle liens and apply the same operation to construction liens. This link is on the Internet and if they are a contractor, etc. they can search and file construction or notice liens. The homeowner will get even more protection under this system than they had before. There is no money out of the taxpayer's pocket or the State of Montana.

Carl Schweitzer, Sub-Contractors Assoc., said their biggest problem is the ability to file liens. He hopes the system will be big enough to handle everyone that is interested in participating in this process.

Gene Schadt, Helena Sand and Gravel, said he receives many phone calls of concern and questions when they send out the present notice. The language is very legal and almost immediately says to contact your lawyer. The bottom of the notice explains it is

layman's terms, but most people never get that far. This will allow the homeowner to interpret it more clearly.

{Tape : 1; Side : B; Approx. Time Counter : 9:17 a.m.}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN said he wants to make sure that the changes still gives proper notification. He asked if there is still local notice and how do they handle sub-contractor notices? **Mike Foster** said the notice still has to be presented to the owner. The actual filing though can be done electronically.

SEN. BARTLETT said there is a fundamental public policy here that has not been addressed. She said in every other instance where a lien has been directed to the Secretary of State's office, it is on personal property only. This will be the first time that there will be an attachment to real property. And this will be the first time it will be filed somewhere else besides the County Clerk and Recorders office. Construction liens always attach to real property. Is this good policy to change the area in which it is filed? **SEN. BISHOP** said they can still file with the Clerk and Recorder. He said he doesn't know of any other documents regarding real property that is filed with the Secretary of State.

SEN. BARTLETT said the whole purpose of the interim committee was to make sure that the individual homeowner had adequate notice and how to protect themselves from construction liens.

Closing by Sponsor:

SEN. BISHOP said nothing is as complicated as lien law and he has represented people who have had to pay twice. This is not an uncommon thing.

{Tape : 1; Side : B; Approx. Time Counter : 9:24 a.m.}

HEARING ON SB 450

Sponsor: **SEN. J.D. LYNCH, SD 19, Butte**

Proponents:

Belinda Fargher, Ambassador Notary Assoc.
William Gowen, Abstract and Title Co.

MONTANA SENATE
1999 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL

DATE 2/17/99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	X		
SEN. STEVE DOHERTY	X		
SEN. DUANE GRIMES	X		
SEN. MIKE HALLIGAN	X		
SEN. RIC HOLDEN	X		
SEN. REINY JABS	X		
SEN. WALT MC NUTT	X		
SEN. AL BISHOP,VICE CHAIRMAN	X		
SEN. LORENTS GROSFIELD, CHAIRMAN	X		

DATE 2/17/99

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 450, SB 451, SB 456, SB 473, SB 476, SB 477 SB 486

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
JOHN CADBY	443 4121	MT BANKERS	SB476	✓	
Belinda Faragher	782-3123	St. Lynch	SB450		
Mike Foster	442-4162	MT Contractors' Assoc.	SB 476	✓	
NOEL LARRIVEE	523-4944	MRTMA	SB477	✓	
G. Van Horssen	2-0230	MHP	SB456	✓	
BETTY WADDELL	442-3525	MT Assoc. of Churches	SB486	✓	
Jon Coburn	227-8629	Self	SB 450		✓
Ronda Carpenter	899-5059	MT Housing Providers	SB456	✓	
LEE KIMBERLING	273-2767				
DUANE KNAPP	" 0188				
AL PONTRELLI	422-9555	MTALU	SB473	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 19, 1999 at 8:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Mike Halligan (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 505, SB 506, SB 507, 2/16/1999
Executive Action: SB 198, SB 403, SB 402, SB 450, SB 451, SB 472, SB 476, SB 503, SB 505, SB 506, SB 507

HEARING ON SB 505, SB 506, SB 507

Sponsor: **SEN. DUANE GRIMES, SD 20, Clancy**

Proponents: **Toohe Welker, Director of Sanders County Coalition for Families**
Ward Shanahan, State Bar of Montana
Penny McPherson, Rosebud County Victim/Witness

CHAIRMAN GROSFIELD remarked that travelers in any foreign country, are required to have identification at all times. In most countries, every citizen is required to have an identification card. This country does not have requirements to this degree. This legislation is going down the road toward DNA sampling.

SEN. JABS stated that unfortunately there are a few people who do taken advantage of the vulnerable people in our society.

Vote: Motion **carried 7-1 with Holden voting no.**

EXECUTIVE ACTION ON SB 402

Motion: **SEN. BARTLETT** moved that **SB 402 BE TABLED.**

Discussion:

CHAIRMAN GROSFIELD explained that any bill before this session because of CI-75 does not have a transmittal deadline.

Vote: Motion **carried unanimously - 8-0.**

EXECUTIVE ACTION ON SB 198

Discussion:

CHAIRMAN GROSFIELD asked the Committee to reconsider its action in tabling SB 198. If **SEN. SWYSGOOD** is agreeable, he would move that SB 198 be taken from the Judiciary Committee and placed in the Senate Finance and Claims Committee. The reason is that Senate Finance and Claims is struggling with issues surrounding the Department of Correction's budget.

If **SEN. SWYSGOOD** doesn't agree to this, the motion will not be made on the Senate Floor and the bill will stay in Committee and miss the transmittal deadline.

Motion/Vote: **SEN. MCNUTT** moved that **THE COMMITTEE RECONSIDER ITS ACTION IN TABLING SB 198. Motion carried 8-0.**

EXECUTIVE ACTION ON SB 476

Ms. Lane explained that there had been a request for a July 1, 2000 effective date. There were also concerns that the pilot program was statewide and it was suggested that this be pared down to five or six counties. She added that one technical amendment has already been adopted by the Committee.

CHAIRMAN GROSFIELD remarked that Section 2 did not provide any guidelines for the Secretary of State's Office. The reason for the change in the effective date was to give the Secretary of State's Office ample time to work on this with the various stakeholders.

Ms. Lane explained that the termination applies only to Sections 1, 2, 3, and 5 because this involves the pilot program. The only section that wasn't terminated is Section 4 which changes the form.

Motion/Vote: **SEN. MCNUTT** moved that **SB 476 BE AMENDED BY MOVING A DELAYED EFFECTIVE DATE FOR SECTIONS 1, 2, 3, AND 5, TO JULY 1, 2000. Motion carried unanimously -8-0.**

Motion: **SEN. BARTLETT** moved that **SB 476 BE AMENDED.**

Discussion:

SEN. BARTLETT explained that the form that goes to the homeowner should include the information on lines 26, 27, 28, and 29 on page 5. The notice states that this notice has been sent by and then leaves space for the name, address and telephone.

Vote: Motion **carried unanimously - 7-0.**

Motion/Vote: **SEN. DOHERTY** moved that **SB 476 BE AMENDED BY REINSERTING LINES 12 AND 13 ON PAGE 5. Motion carried unanimously - 7-0.**

Motion/Vote: **SEN. MCNUTT** moved that **SB 476 DO PASS AS AMENDED. Motion carried unanimously - 7-0** with **SEN. GRIMES** being excused from the meeting.

MONTANA SENATE
1999 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL

DATE 2-19-99

NAME	PRESENT	ABSENT	EXCUSED
SEN. SUE BARTLETT	✓		
SEN. STEVE DOHERTY	✓		
SEN. DUANE GRIMES	✓		
SEN. MIKE HALLIGAN			✓
SEN. RIC HOLDEN	✓		
SEN. REINY JABS	✓		
SEN. WALT MC NUTT	✓		
SEN. AL BISHOP,VICE CHAIRMAN	✓		
SEN. LORENTS GROSFIELD, CHAIRMAN	✓		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Judiciary** report that **Senate Bill 476** (first reading copy -- white) **do pass as amended.**

Signed: _____
Senator Lorents Grosfield, Chair

And, that such amendments read:

1. Title, line 9.
Following: "PROVIDING"
Insert: "EFFECTIVE DATES AND"

2. Page 5, line 24.
Following: "~~paid.~~"
Insert: "This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at ....."

3. Page 6, line 4.
Following: line 3
Insert: "This notice has been sent to you by:
NAME:.....
ADDRESS:.....
TELEPHONE:....."

4. Page 7, line 2.
Following: "The"
Strike: "notice of the right to claim a"

5. Page 8, line 6.
Insert: "NEW SECTION. **Section 8. Effective dates.** (1) Except

Committee Vote:
Yes , No 0.

411327SC.srf

as provided in subsection (2), [this act] is effective October 1, 1999.

(2) [Sections 1, 2, 3, and 5] are effective July 1, 2000."

Renumber: subsequent section

- END -

SB 416 SPONSOR: Grosfield, Lorents SHORT TITLE: Clarify order for new trial after guilty verdict
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 03/02/1999 HEARD ON: 03/15/1999
EXECUTIVE ACTION: 03/22/1999 Bill Concurred as Amended -- VOTE: 20 - 0
FINAL DISPOSITION 04/14/1999 Chapter Number Assigned

SB 463 SPONSOR: Wells, Jack SHORT TITLE: Clarify liability of state in contract actions
REFERRED ON: 03/02/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 19 - 0
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

SB 472 SPONSOR: Wells, Jack SHORT TITLE: Revise criminal code provisions relating to machine guns and silencers
REFERRED ON: 03/02/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 20 - 0
FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

SB 473 SPONSOR: Doherty, Steve SHORT TITLE: Generally revise laws relating to estates, trusts, & fiduciary relationships
BY REQUEST OF: (S) Judiciary Standing Committee
REFERRED ON: 03/02/1999 HEARD ON: 03/19/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 19 - 0
FINAL DISPOSITION 04/12/1999 Chapter Number Assigned

SB 476 SPONSOR: Bishop, Al SHORT TITLE: Revise laws relating to construction liens
REFERRED ON: 03/02/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/30/1999 Bill Concurred as Amended -- VOTE: 17 - 2
TABLED ON: 03/25/1999
FINAL DISPOSITION 04/20/1999 Chapter Number Assigned

SB 477 SPONSOR: Mahlum, Dale SHORT TITLE: Limit employer liability for ride sharing arrangements
REFERRED ON: 03/02/1999 HEARD ON: 03/23/1999
EXECUTIVE ACTION: 03/26/1999 Bill Concurred -- VOTE: 16 - 3
FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 23, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 463, SB 472, SB 476, SB 477, 3/15/1999

{Tape : 1; Side : B; Approx. Time Counter : 38 - 170}
Jeff Reising, self-collector
{Tape : 1; Side : B; Approx. Time Counter : 170 - 245}

Opponents:

Betty Waddell, Montana Association of Churches
{Tape : 1; Side : B; Approx. Time Counter : 245 - 371}
EXHIBIT(4)

Informational Testimony:

None
Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 371 - 550}
{Tape : 2; Side : A; Approx. Time Counter : 0 - 313}

(Rep. Carol Williams wanted for the record to reflect that she objected to the line of questioning by Chairman R. Clark to Ms. Waddell.)
{Tape : 2; Side : A; Approx. Time Counter : 313 - 324}

Closing by Sponsor:

Senator Wells made closing statements.
{Tape : 2; Side : A; Approx. Time Counter : 324 - 450}
EXHIBIT(5)
EXHIBIT(6)

HEARING ON SB 476

Sponsor:

Senator Bishop presented SB 476.
{Tape : 2; Side : A; Approx. Time Counter : 450 - 550}

Proponents:

Mike Foster, Montana Contractor's Association
{Tape : 2; Side : B; Approx. Time Counter : 0 - 70}
Ed Maronick, Maronick Construction
{Tape : 2; Side : B; Approx. Time Counter : 70 - 92}
John Cadby, Montana Bankers Association
{Tape : 2; Side : B; Approx. Time Counter : 92 - 133}

Carl Schweitzer, Association of Sub-Contractors
{Tape : 2; Side : B; Approx. Time Counter : 133 - 143}
Gene Schadt, Helena Sand & Gravel
{Tape : 2; Side : B; Approx. Time Counter : 143 - 195}

Opponents:

None

Informational Testimony:

Bill Gowen, Helena Abstract & Title
{Tape : 2; Side : B; Approx. Time Counter : 195 - 227}

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 227 - 550}
{Tape : 3; Side : A; Approx. Time Counter : 0 - 106}

Closing by Sponsor:

Senator Bishop made closing statements.
{Tape : 3; Side : A; Approx. Time Counter : 106 - 136}

HEARING ON SB 477

Sponsor:

Senator Mahlum presented SB 477,
{Tape : 3; Side : A; Approx. Time Counter : 168}

Proponents:

Noel Larrivee, Missoula County Transportation
{Tape : 3; Side : A; Approx. Time Counter : 168 - 237}
EXHIBIT(7)
(additional handouts in packet from Mr. Larrivee)
Pat Saindon, Dept. of Transportation
{Tape : 3; Side : A; Approx. Time Counter : 237 - 262}

Opponents:

None
Informational Testimony:

Christina Schweitzer, Montana Trial Lawyers Association

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 3/23/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair			
Dan McGee, vice chair			
Diana Wyatt, vice chair			
Chris Ahner			
Shiell Anderson			
Paul Clark			
Aubyn A. Curtiss			
Bill Eggers			
Tom Facey			
Steven Gallus			
Gail Gutsche			
Joan Hurdle			
Rick Jore			
Sam Kitzenberg			
Brad Molnar			
Mark Noenning			
Jim Shockley			
Loren Soft			
Carol Williams			
Cindy Younkin			

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MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

HOUSE JUDICIARY COMMITTEE

DATE 3/23/09

BILL NO. SB 476 SPONSOR(S) Senator Bishop

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)
(PLEASE IDENTIFY TYPE OF VISITOR)

PLEASE PRINT

TYPE	NAME	ADDRESS	REPRESENTING
Proponent	Mike Foster	Helena	MT Contractors' Assoc.
Proponent	Ed MARONICK	HELENA	MARONICK CONST.
P	Gene Schadt	Helena	Helena Sand & Gravel
~~P~~	~~Christian Schweitzer~~	~~Helena~~	~~MT Trial Lawyers~~
I	Angela Fultz	Helena	Sec. of State
P	JOHN CADBY	"	MT BANKERS ASSN.
P	Carl Schweitzer	"	Amer. Soc. Assn of MT
I	WILLIAM F. GOWEN	Helena	MLTA & Helena Abstract Co

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 25, 1999 at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: Rep. Bill Eggers (D)

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:
Executive Action: SB 476-Tabled; SB 186-Be concurred in as amended, SB

Motion/Vote: REP. SHOCKLEY moved that SB 472 BE AMENDED. Motion carried unanimously.
Motion/Vote: REP. AHNER moved that SB 472 BE CONCURRED IN AS AMENDED. Motion carried unanimously.
{Tape : 3; Side : B; Approx. Time Counter : 193 - 360}

EXECUTIVE ACTION ON SB 476

Motion: REP. AHNER moved that SB 476 BE CONCURRED IN.
Motion/Vote: REP. AHNER moved that SB 476 BE AMENDED. Motion carried unanimously.
Motion: REP. AHNER moved SB 476.
Motion/Vote: REP. NOENNIG moved SB 476. Motion carried unanimously.
Motion: REP. AHNER moved that SB 476 BE CONCURRED IN AS AMENDED.
Motion: REP. YOUNKIN moved that SB 476 BE AMENDED.
Motion/Vote: REP. ANDERSON moved that SB 476 BE TABLED. Motion carried 12-8 with Eggers, Facey, Gallus, Molnar, Noennig, Williams, Wyatt, and Younkin voting no.
{Tape : 3; Side : B; Approx. Time Counter : 360 - 550}
{Tape : 4; Side : A; Approx. Time Counter : 0 - 130}

Rep. Kitzenberg handed out exhibits for SB 33 that has already been tabled previously.

EXHIBIT(7)
EXHIBIT(8)

Meeting adjourned.

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 3/25/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	✓		
Dan McGee, vice chair	✓		
Diana Wyatt, vice chair	✓		
Chris Ahner	✓		
Shiell Anderson	✓		
Paul Clark	✓		
Aubyn A. Curtiss	✓		
Bill Eggers			✓
Tom Facey	✓		
Steven Gallus	✓		
Gail Gutsche	✓		
Joan Hurdle	✓		
Rick Jore	✓		
Sam Kitzenberg	✓		
Brad Molnar	✓		
Mark Noenning	✓		
Jim Shockley	✓		
Loren Soft	✓		
Carol Williams	✓		
Cindy Younkin	✓		

COMMITTEE FILE COPY

TABLED BILL

The **HOUSE JUDICIARY COMMITTEE** TABLED **SB 476**, by motion, on **Thursday, March 25, 1999**.

(For the Committee)

(Chief Clerk of the House)

(Time) 3/25 (Date)

March 25, 1999 Pam E. Schindler, Secretary Phone: 444-4788

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on March 30, 1999 at 10:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: Rep. Sam Kitzenberg (R)

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 533, HJR 35, 3/27/1999
Executive Action: SB 22-Be Concurred in, SB 533-Be Concurred in as Amended, SB

476-Be Concurred in as Amended; HJR 35-Do Pass as Amended

EXECUTIVE ACTION ON SB 22

Motion/Vote: REP. MCGEE moved SB 22-RECONSIDER AND REMOVE FROM TABLED STATUS. Motion carried 13-6 with Anderson, Facey, Hurdle, Jore, Shockley, and Wyatt voting no.
Motion/Vote: REP. MCGEE moved that SB 22 BE CONCURRED IN. Motion carried 13-6 with Anderson, Facey, Hurdle, Jore, Shockley, and Wyatt voting no.
(Rep. Kitzenberg absent during meeting)
{Tape : 1; Side : A; Approx. Time Counter : 0 - 250}

HEARING ON SB 533

Sponsor:

Senator Devlin presented SB 533.
{Tape : 1; Side : A; Approx. Time Counter : 250 - 286}

Proponents:

Mark Staples, Montana Wholesalers Association
{Tape : 1; Side : A; Approx. Time Counter : 286 - 359}
Jerome Anderson, Brown Williams Tobacco Co.
{Tape : 1; Side : A; Approx. Time Counter : 359 - 384}
Steve Wade, Phillip Morris Tobacco Co.
{Tape : 1; Side : A; Approx. Time Counter : 384 - 399}
Jeff Miller, Dept. of Revenue
{Tape : 1; Side : A; Approx. Time Counter : 399 - 418}
Steve Bullock, Dept. of Justice
{Tape : 1; Side : A; Approx. Time Counter : 418 - 429}

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 429 - 550}

{Tape : 2; Side : A; Approx. Time Counter : 0 - 17}

Closing by Sponsor:

Rep. Wyatt made closing statements.
{Tape : 2; Side : A; Approx. Time Counter : 17 - 55}

EXECUTIVE ACTION ON HJR 35

Motion: REP. AHNER moved HJR 35.
Motion/Vote: REP. GUTSCHE moved that HJR 35 BE AMENDED. Motion carried 19-0.
(Rep. Kitzenberg absent during meeting)
Motion/Vote: REP. AHNER moved that HJR 35 BE CONCURRED IN AS AMENDED. Motion carried 18-1 with Jore voting no.
(Rep. Kitzenberg absent during meeting)
{Tape : 2; Side : A; Approx. Time Counter : 55 - 70}

EXECUTIVE ACTION ON SB 533

Motion: REP. CURTISS moved that SB 533 BE CONCURRED IN.
Motion/Vote: REP. NOENNIG moved that SB 533 BE AMENDED. Motion carried 19-0.
(Rep. Kitzenberg absent during voting)
Motion: REP. SHOCKLEY moved that SB 533 BE CONCURRED IN AS AMENDED.
Motion/Vote: REP. EGGERS moved that SB 533 BE AMENDED. Motion carried 18-1 with Jore voting no.
(Rep. Kitzenberg absent during meeting)
Motion/Vote: REP. SHOCKLEY moved that SB 533 BE CONCURRED IN AS AMENDED. Motion carried 13-6 with Ahner, R. Clark, McGee, Molnar, Shockley, and Wyatt voting no.
(Rep. Kitzenberg absent during meeting)
{Tape : 2; Side : A; Approx. Time Counter : 70 - 319}

EXECUTIVE ACTION ON SB 476

Motion/Vote: REP. YOUNKIN moved SB 476-RECONSIDER AND REMOVE FROM TABLED STATUS. Motion carried 11-8 with R. Clark, Gallus, Gutsche, Hurdle, Jore, McGee, Shockley, and Williams voting no.
(Rep. Kitzenberg absent during meeting)
Motion: REP. YOUNKIN moved that SB 476 BE AMENDED.

Motion/Vote: **REP. NOENNIG** moved **SB 476-USE A SUBSTITUTE AMENDMENT WITH REP. YOUNKIN'S AMENDMENT. Motion carried 18-1 with Gallus voting no.**
(Rep. Kitzenberg absent during meeting)
Motion/Vote: **REP. NOENNIG** moved that **SB 476 BE CONCURRED IN AS AMENDED. Motion carried 17-2 with Gallus and Jore voting no.**
(Rep. Kitzenberg absent during meeting)
{Tape : 2; Side : A; Approx. Time Counter : 319 - 550}
{Tape : 2; Side : B; Approx. Time Counter : 0 - 96}

Dinner plans were discussed wit the committee.
Meeting adjourned.

HOUSE OF REPRESENTATIVE
ROLL CALL

JUDICIARY COMMITTEE

DATE 3/30/99

NAME	PRESENT	ABSENT	EXCUSED
Robert C. Clark, chair	✓		
Dan McGee, vice chair	✓		
Diana Wyatt, vice chair	✓		
Chris Ahner	✓		
Shiell Anderson	✓		
Paul Clark	✓		
Aubyn A. Curtiss	✓		
Bill Eggers	✓		
Tom Facey	✓		
~~Steven Gallus~~	✓		
~~Gail Gutsche~~	✓		
~~Joan Hurdle~~	✓		
~~Rick Jore~~	✓		
Sam Kitzenberg	—	—	
Brad Molnar	✓		
Mark Noenning	✓		
Jim Shockley	✓		
Loren Soft	✓		
Carol Williams	✓		
Cindy Younkin	✓		

HOUSE STANDING COMMITTEE REPORT

Mr. Speaker:

We, your committee on **Judiciary** report that **Senate Bill 476** (third reading copy -- blue) **be concurred in as amended.**

Signed: Robert C. Clark
Representative Robert C. Clark, Chair

To be carried by Representative Cindy Younkin

And, that such amendments read:

1. Title, line 6 through line 8.
Strike: "REQUIRING" on line 6 through "STATE" on line 8
Insert: "PROVIDING THAT THE COUNTY CLERK AND RECORDER MAY ALLOW THE LIEN AND A NOTICE OF THE RIGHT TO CLAIM A LIEN TO BE FILED ELECTRONICALLY"
Following: ";"
Insert: "AND"
Strike: "2-15-401," on line 8

2. Title, line 9 through line 10.
Strike: "; AND" on line 9 through "DATE" on line 10

3. Page 1, line 14 through page 2, line 24.
Strike: section 1 through section 2 in their entirety
Renumber: subsequent sections

4. Page 3, line 26.
Strike: "Except as provided in subsection (6)(b), a"
Insert: "A"

5. Page 4, line 1.
Following: "The"
Insert: "county clerk and recorder may allow the"
Strike: "may"
Insert: "to"

Committee Vote:
Yes 17, No 2.

711351SC.ham

6. Page 4, line 1 through line 2.
Strike: "with" on page 4, line 1 through "[section 2]" on page 4, line 2

7. Page 4, line 6.
Strike: "or secretary of state"

8. Page 4, line 9.
Strike: "or secretary of state's"

9. Page 4, line 14.
Strike: "or secretary of state"

10. Page 5, line 27.
Following: "AT ..... ."
Insert: "If ..... is not paid, a lien may be filed against the property."

11. Page 7, line 7.
Strike: "Except as provided in subsection (2)(b), the"
Insert: "The"

12. Page 7, line 8.
Following: "located"
Insert: ", and the county clerk and recorder may allow the lien to be filed electronically"

13. Page 7, line 9 through line 10.
Strike: subsection (b) in its entirety
Renumber: subsequent subsection

14. Page 7, line 11 through line 12.
Strike: "or" on line 11 through "state" on line 12

15. Page 8, line 6 through line 18.
Strike: section 6 through section 9 in their entirety

- END -

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

HOUSE JUDICIARY XXSUBCOMMITTEE

DATE 3/30 BILL NO. _____ NUMBER _____

MOTION: _____

SB476- Remove from Table Passed

NAME	AYE	NO
ROBERT CLARK, CHAIRMAN		✓
DAN MC GEE, VICE CHAIR		✓
DIANA WYATT, VICE CHAIR	✓	
CHAIR AHNER	✓	
SHEILL ANDERSON	✓	
PAUL CLAKR	✓	
AUBYN CURTISS	✓	
BILL EGGERS	✓	
TOM FACEY	✓	
STEVE GALLUS		✓
GAIL GUTSCHE		✓
JOAN HURDLE		✓
RICK JORE		✓
SAM KITZENBERG		
BRAD MOLNAR	✓	
MAKR NOENNING	✓	
JIM SHOCKLEY		✓
LOREN SOFT	✓	
CAROL WILLIAMS		✓
CINDY YOUNKIN	✓	
	11	8

1999 Montana Legislature

About Bill -- Links

SENATE BILL NO. 476

INTRODUCED BY A. BISHOP

AN ACT REVISING THE LAWS RELATING TO CONSTRUCTION LIENS; REVISING THE FORM FOR GIVING NOTICE OF THE RIGHT TO CLAIM A CONSTRUCTION LIEN; PROVIDING THAT THE COUNTY CLERK AND RECORDER MAY ALLOW THE LIEN AND A NOTICE OF THE RIGHT TO CLAIM A LIEN TO BE FILED ELECTRONICALLY; AND AMENDING SECTIONS 71-3-531, 71-3-532, AND 71-3-535, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim lien required -- exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

(a) a person who furnishes services or materials directly to the owner at ~~his~~ the owner's request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of ~~his~~ the right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), this notice ~~must~~ may not be given ~~no~~ later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 20-day period before the date on which notice is given.

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(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting party from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section ~~must~~ may not be given ~~no~~ later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to ~~him~~ the owner. Notice by certified mail is effective on the date on which the notice is mailed. If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless ~~he~~ the person has complied with this subsection.

(6) (a) A person who may claim a lien shall also file with the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. This copy ~~must~~ may not be filed ~~no~~ later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed.

~~(b)~~(c) The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filing. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

~~(c)~~(d) The continuation statement must include:

(i) the clerk and recorder's file number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

~~(d)~~(e) If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time ~~he~~ that the person files ~~his~~ the lien.

(7) At the request of any subcontractor or material supplier who may claim a lien through ~~him~~ a person providing services or materials to a contracting owner, ~~a~~ the person shall furnish to the requestor within 5 business days:

(a) a description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner."

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Section 2. Section 71-3-532, MCA, is amended to read:

"71-3-532. Content of notice of right to claim lien. (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information ~~and be in substantially the following form~~:

(a) date of mailing;

(b) owner's name;

(c) owner's address;

(d) name of person filing notice;

(e) address of person filing notice;

(f) a description sufficient to identify the property that is being improved; and

(g) the following notice:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

~~To: ..... Date of mailing: .....~~

~~(Owner)~~

~~.....~~

~~(Owner's address)~~

~~This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at .....~~

~~A lien may be claimed for all services and materials furnished to you if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 20-day period before the date on which the notice is given. However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before~~

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~~the date the notice is given.~~

~~— Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid.~~ This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at ..... . If ..... is not paid, a lien may be filed against the property. THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

~~— This notice has been sent to you by:~~

~~NAME:.....~~

~~ADDRESS:.....~~

~~TELEPHONE:.....~~

~~IF YOU HAVE ANY QUESTIONS ABOUT THIS NOTICE, PLEASE CALL US~~

~~IMPORTANT INFORMATION ON REVERSE SIDE~~

~~—~~

~~IMPORTANT INFORMATION FOR YOUR PROTECTION~~

This notice has been sent to you by:

NAME: .....

ADDRESS: .....

TELEPHONE: .....

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

-- RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

-- LEARN more about the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

-- WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.

-- OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.

-- CONSULT an attorney, a professional escrow company, or your mortgage lender."

Section 3. Section 71-3-535, MCA, is amended to read:

"71-3-535. Attachment of lien -- filing. (1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, ~~he~~ the person has filed a lien not later than 90 days after:

(a) ~~his~~ the person's final furnishing of services or materials; or

(b) the owner files a notice of completion pursuant to 71-3-533.

(2) (a) The lien must be filed with the county clerk and recorder of the county in which the improved real estate is located, and the county clerk and recorder may allow the lien to be filed electronically.

(b) The person claiming the lien ~~must~~ shall certify to the county clerk and recorder that a copy of the lien has been served on the owner of record as provided in 71-3-534(2).

(3) The lien statement must contain:

(a) the name and address of the person claiming the lien;

(b) a description of the real property against which the lien is claimed sufficient to identify it;

(c) the name of the contracting owner;

(d) the name and address of the party with whom the person claiming the lien contracted to furnish services or materials;

(e) a description of the services or materials provided;

(f) the amount unpaid for services or materials or, if no amount is fixed by the contract, a good faith estimate of the amount unpaid, designated as an estimate;

(g) (i) the date on which the services or materials were first furnished; and

(ii) the date on which the services or materials were last furnished; and

(h) a declaration that a notice of a right to claim a lien was given to the contracting owner or an explanation of why ~~such~~ the notice was not required.

(4) A lien notice that is filed pursuant to this section before the person claiming the lien has substantially furnished services or materials pursuant to a real estate improvement contract is not effective to create a construction lien unless the lien claimant is prevented from fulfilling ~~his~~ the lien claimant's obligation because of the fault of another person.

(5) Except as provided in subsection (6), a lien attaches at the commencement of work as defined in 71-3-522.

(6) A lien attaches when it is filed if it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures that are not used incident to producing a change in the physical condition of the real estate."

- END -

Latest Version of SB 476 *(SB0476.ENR)*
Processed for the Web on April 13, 1999 (10:26AM)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted. See the status of the bill for the bill's primary sponsor.

Status of this Bill | 1999 Session | Leg. Branch Home
This bill in WP 5.1 | All versions of all bills in WP 5.1

Prepared by Montana Legislative Services
(406)444-3064